

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

ONE ASHBURTON PLACE, ROOM 411
BOSTON, MASSACHUSETTS 02108
(617) 727-8352
(800) 462-OCPF

MICHAEL J. SULLIVAN
DIRECTOR

January 23, 1995
AO-95-02

Richard S. Mann, Esq.
55 William Street
Needham, MA 02194

Re: Theodore D. Mann Excellence in Education Endowment

Dear Mr. Mann:

This letter is in response to your December 2, 1994 letter requesting an advisory opinion.

You have stated that you are a settlor of the Theodore D. Mann Excellence in Education Endowment ("the Trust"), a charitable trust named in honor of Newton's late mayor and intended to support public education in Newton. You are a son of former Mayor Mann. The other settlors of the Trust are your mother, Florence Mann, and your sister, Leslie Mann Kaplan. The Declaration of Trust creating the Trust and defining the powers of the Board of Trustees was executed by the settlors on July 6, 1994.

You would like to transfer surplus funds from your father's political campaign committee to the Trust. No family member¹ will serve on the Board of Trustees established by the Declaration of Trust or as an officer of the Trust. However, you are considering the possibility of establishing an honorary Board of Governors or Overseers (the "honorary board") which will have no rights or powers under the Trust and family members might serve on the board.

You have asked if service by a family member on the honorary board would preclude the transfer of residual funds from the Theodore D. Mann Campaign Committee to the Trust. For the reasons which follow, service by a family member on the honorary board would not preclude the transfer.

¹ We assume that "no family member" means no person related by consanguinity or affinity, "i.e.", no person related by blood or marriage.

The "residual funds clause" in section 18 of chapter 55 provides that when a candidate or political committee closes its account, it must donate the residual funds remaining in the account to (1) the Local Aid Fund established under the provisions of M.G.L. c. 29, s. 2D; (2) a religious or charitable organization which is subject to M.G.L. c. 67 or M.G.L. c. 12, s. 8; (3) a scholarship fund; or (4) the general fund of any city or town in the commonwealth.

Payment of residual funds to a scholarship under section 18 may only be made, however, if:

. . . the candidate, treasurer or any official of the political committee shall not be related by consanguinity or affinity to any trustee, officer, principal or beneficiary of said entity either at the time of the gift or within ten years from the date of such gift; provided, further, that no entity may employ as a trustee, officer, principal or beneficiary any person related by consanguinity or affinity to the candidate, treasurer or any official of the political committee either at the time of the gift or within ten years from the date of such gift .
.. [emphasis added].

The campaign finance law prohibits the use of campaign funds for the personal use of the candidate or any other person. See M.G.L. c. 55, s. 6. The intent of the residual funds clause's restriction on distributing residual funds to entities which are controlled by or which benefit family members of candidates or committee officers is to avoid such personal use of campaign funds.

We assume that no family member would be the recipient of any compensation or other disbursement of funds, provided by the Trust, i.e., no family member would be a "beneficiary" of the Trust. You have stated that no family member will serve as trustee of the Trust. Therefore, we need to determine whether a member of the honorary board would be an "officer" or "principal" of the Trust within the context of the residual funds clause.

Given the facts stated in your letter, the Trust, like other charitable trusts, will be controlled by trustees (not officers). Trustees, not officers, are the fiduciaries under the Declaration of Trust and will control the disposition of Trust funds. Therefore, the relevant restriction in the context of a transfer to a trust is the prohibition against the transfer of residual funds to an entity having a trustee or beneficiary who is related to a candidate or committee officer.

The statutory prohibition against a transfer to an entity employing "officers" or "principals" related to a candidate or officer of a political committee generally would apply in other factual contexts. For example, where the recipient of residual funds is a charitable corporation incorporated pursuant to M.G.L. c. 180, the officers of the corporation would control the disposition of funds or benefit from the receipt of funds.

Although there may be instances where officers who are able to personally benefit from the transfer of residual funds or control the disposition of funds are appointed by trustees or settlors, i.e., the person or persons who create a trust, this does not appear to be such an instance. Based on the facts presented we do not believe that members of the honorary board are "officers" of the trust.

In AO-95-01, a recent advisory opinion issued by this office, we considered the meaning of the word "principal." We concluded that an "honorary chairman" of a political action committee was a "principal officer" of the committee within the context of M.G.L. c. 55, s. 5A. Section 5A prohibits candidates and elected office holders from serving as principal officers of PACs. Citing Webster's New Collegiate Dictionary, we stated that a "principal officer" of a PAC is a "most important, consequential or influential" officer of the PAC or is otherwise "in a leading position" in the PAC.

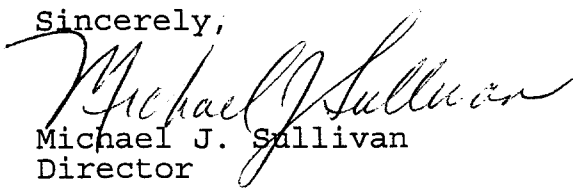
AO-95-01 involved different facts and legal considerations from those raised by your letter, and its discussion of the meaning of the word "principal" is not applicable here. The opinion concerned an honorary chairman selected to give a PAC credibility and help ensure the PAC's goal of raising funds. In contrast, given the facts stated in your letter, members of the honorary board would serve in an advisory capacity and would not be involved in raising funds. In addition, AO-95-01 concerned the application of s. 5A of the statute, not the residual funds clause of s. 18. The two provisions serve different purposes. In short, although an honorary chairman of a PAC might be a "principal officer" of the PAC for purposes of s. 5A, given the facts in your letter, a member of the honorary board of a trust receiving residual funds from a political committee is not a "principal" of the trust within the context of the residual funds clause.²

Therefore, the Theodore D. Mann Campaign Committee may transfer funds remaining in its account to the Theodore D. Mann Excellence in Education Endowment.

This opinion has been rendered solely on the basis of the representations in your letter and solely in the context of M.G.L. c. 55.

Please do not hesitate to contact this office should you have additional questions.

Sincerely,


Michael J. Sullivan
Director

MJS/cp

² Also, as noted above, the statutory reference to "principal" in s. 18 would not generally apply to transfers to a trust.